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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 34 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -No.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

COMMISSIONER OF INCOME TAX

Versus

TANVI SAJNI FAMILY TRUST

Appearance:

Mr.M.J. Thakore, Advocate, instructed
MR MANISH R BHATT for the Applicant.
SERVED BY RPAD for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 04/02/97

ORAL JUDGEMENT : (Per R.K. Abichandani, J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court the following question under Section 256(1) of the Income Tax Act, 1961 :-

" Whether on the facts and in the circumstances of the case, the assessee trust could be treated as non-discretionary trust and consequently the income should be allocated amongst the beneficiaries and taxed in their respective hands without application of section 164 of the I.T. Act, 1961?"

The relevant assessment years are 1978-'79 and 1979-'80. The assessee is a Trust, which was treated as a discretionary Trust by the I.T.O. and assessed, applying the provisions of Section 164 of the Act. The C.I.T. (Appeals), however, held, in appeal, that the Trust was not a discretionary Trust and the provisions of Section 164 were not applicable to it. The Tribunal confirmed the view taken by the C.I.T. (Appeals) following its earlier decision in assessee's own case in respect of assessment year 1975-'76.

It is pointed out to us that similar question was referred for the opinion of this Court in the assessee's own case in respect of the said assessment year 1975-'76 and this Court, by its Opinion dated 4th February, 1994, in C.I.T. v. Tanvi Sajni Family Trust, reported in 209 ITR 497, opined that the provisions of Section 164 of the Act were not applicable to the case of the assessee and the assessment was not required to be made under the provisions of Section 164 since the shares of the beneficiaries were determinate. Following the said decision, we answer the question referred to us in the affirmative, in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly.

(apj)